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climate control, and available exhibition cases or other necessary fixtures; and

(3) NARA has resources (such as exhibit and security staff) available to produce the special exhibit.

(c) The Assistant Archivist for Public Programs (NE), in conjunction with the NARA General Counsel when appropriate, shall review all offers to display privately-owned material and shall negotiate the terms of exhibition

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for offers that can be accepted. The lender shall provide evidence of title to and authenticity of the item(s) to be displayed before any loan agreement is executed.

(d) The Assistant Archivist shall inform the offeror of NARA's decision within 60 days.

[55 FR 25307, June 21, 1990]

PARTS 1285—1299 [RESERVED]

CHAPTER XIV—ASSASSINATION RECORDS REVIEW BOARD

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PART 1400—GUIDANCE FOR INTERPRETATION AND IMPLEMENTATION OF THE PRESIDENT JOHN F. KENNEDY ASSASSINATION RECORDS COLLECTION ACT OF 1992 (JFK ACT)

Sec.

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AUTHORITY: 44 U.S.C. 2107.

SOURCE: 60 FR 33349, June 28, 1995, unless otherwise noted.

§ 1400.1 Scope of assassination record.

(a) An *assassination record* includes, but is not limited to, all records, public and private, regardless of how labeled or identified, that document, describe, report on, analyze or interpret activities, persons, or events reasonably related to the assassination of President John F. Kennedy and investigations of or inquiries into the assassination.

(b) An *assassination record* further includes, without limitation:

(1) All records as defined in Section 3(2) of the JFK Act;

(2) All records collected by or segregated by all Federal, state, and local government agencies in conjunction with any investigation or analysis of or inquiry into the assassination of President Kennedy (for example, any intra-agency investigation or analysis of or inquiry into the assassination; any interagency communication regarding the assassination; any request by the House Select Committee on Assassinations to collect documents and other materials; or any inter- or intra-agency collection or segregation of documents and other materials);

(3) Other records or groups of records listed in the Notice of Assassination Record Designation, as described in § 1400.8 of this chapter.

§ 1400.2 Scope of additional records and information.

The term *additional records and information* includes:

(a) All documents used by government offices and agencies during their declassification review of assassination records as well as all other documents, indices, and other material (including but not limited to those that disclose cryptonyms, code names, or other identifiers that appear in assassination records) that the Assassination Records Review Board (Review Board) has a reasonable basis to believe may constitute an assassination record or would assist in the identification, evaluation or interpretation of an assassination record. The Review Board will identify in writing those records and other materials it intends to seek under this section.

(b) All training manuals, instructional materials, and guidelines created or used by the agencies in furtherance of their review of assassination records.

(c) All records, lists, and documents describing the procedure by which the agencies identified or selected assassination records for review.

(d) Organizational charts of government agencies.

(e) Records necessary and sufficient to describe the agency's:

(1) Records policies and schedules;

(2) Filing systems and organization;

(3) Storage facilities and locations;

(4) Indexing symbols, marks, codes, instructions, guidelines, methods, and procedures;

(5) Search methods and procedures used in the performance of the agencies' duties under the JFK Act; and

(6) Reclassification to a higher level, transfer, destruction, or other information (e.g., theft) regarding the status of assassination records.

(f) Any other record that does not fall within the scope of assassination record as described in § 1400.1, but which has the potential to enhance, enrich, and broaden the historical record of the assassination.

§ 1400.3 Sources of assassination records and additional records and information.

Assassination records and additional records and information may be located at, or under the control of, without limitation:

- (a) Agencies, offices, and entities of the executive, legislative, and judicial branches of the Federal Government;
- (b) Agencies, offices, and entities of the executive, legislative, and judicial branches of state and local governments;
- (c) Record repositories and archives of Federal, state, and local governments, including presidential libraries;
- (d) Record repositories and archives of universities, libraries, historical societies, and other similar organizations;
- (e) Individuals who possess such records by virtue of service with a government agency, office, or entity;
- (f) Persons, including individuals and corporations, who have obtained such records from sources identified in paragraphs (a) through (e) of this section;
- (g) Persons, including individuals and corporations, who have themselves created or have obtained such records from sources other than those identified in paragraphs (a) through (e) of this section;
- (h) Federal, state, and local courts where such records are being held under seal; or
- (i) Foreign governments.

§ 1400.4 Types of materials included in scope of assassination record and additional records and information.

The term *record* in *assassination record* and *additional records and information* includes, for purposes of interpreting and implementing the JFK Act:

- (a) Papers, maps, and other documentary material;
- (b) Photographs;
- (c) Motion pictures;
- (d) Sound and video recordings;
- (e) Machine readable information in any form; and
- (f) Artifacts.

§ 1400.5 Requirement that assassination records be released in their entirety.

An assassination record shall be released in its entirety except for portions specifically postponed pursuant to the grounds for postponement of public disclosure of records established in § 2107.6 of the JFK Act, and no portion of any assassination record shall be withheld from public disclosure solely on grounds of non-relevance unless, in the Review Board's sole discretion, release of part of a record is sufficient to comply with the intent and purposes of the JFK Act.

§ 1400.6 Originals and copies.

(a) For purposes of determining whether originals or copies of assassination records will be made part of the President John F. Kennedy Assassination Records Collection (JFK Assassination Records Collection) established under the JFK Act, the following shall apply:

(1) In the case of papers, maps, and other documentary materials, the Review Board may determine that record copies of government records, either the signed original, original production or a reproduction that has been treated as the official record maintained to chronicle government functions or activities, may be placed in the JFK Assassination Records Collection;

(2) In the case of other papers, maps, and other documentary material, the Review Board may determine that a true and accurate copy of a record in lieu of the original may be placed in the JFK Assassination Records Collection;

(3) In the case of photographs, the original negative, whenever available (otherwise, the earliest generation print that is a true and accurate copy), may be placed in the JFK Assassination Records Collection;

(4) In the case of motion pictures, the camera original, whenever available (otherwise, the earliest generation print that is a true and accurate copy), may be placed in the JFK Assassination Records Collection;

(5) In the case of sound and video recordings, the original recording, whenever available (otherwise, the earliest

generation copy that is a true and accurate copy), may be placed in the JFK Assassination Records Collection;

(6) In the case of machine-readable information, a true and accurate copy of the original (duplicating all information contained in the original and in a format that permits retrieval of the information), may be placed in the JFK Assassination Records Collection; and

(7) In the case of artifacts, the original objects themselves may be placed in the JFK Assassination Records Collection.

(b) To the extent records from foreign governments are included in the JFK Assassination Records Collection, copies of the original records shall be sufficient for inclusion in the collection.

(c) In cases where a copy, as defined in paragraph (a) of this section, is authorized by the Review Board to be included in the JFK Assassination Records Collection, the Review Board may require that a copy be certified if, in its discretion, it determines a certification to be necessary to ensure the integrity of the JFK Assassination Records Collection. In cases where an original, as defined in paragraph (a) of this section, is required for inclusion in the JFK Assassination Records Collection, the Review Board may, at its discretion, accept the best available copy. In such cases that records included in the JFK Assassination Records Collection, whether originals or copies, contain illegible portions, such records shall have attached thereto a certified transcription of the illegible language to the extent practicable.

(d) For purposes of implementing the JFK Act, the term *copy* means a true and accurate photocopy duplication by a means appropriate to the medium of the original record that preserves and displays the integrity of the record and the information contained in it.

(e) Nothing in this section shall be interpreted to suggest that additional copies of any assassination records contained in the JFK Assassination Records Collection are not also assassination records that, at the Review Board's discretion, may also be placed in the JFK Assassination Records Collection.

(f) Nothing in this section shall be interpreted to prevent or to preclude copies of any electronic assassination records from being reformatted electronically in order to conform to different hardware and/or software requirements of audiovisual or machine readable formats if such is the professional judgment of the National Archives and Records Administration.

§ 1400.7 Additional guidance.

(a) A government agency, office, or entity includes, for purposes of interpreting and implementing the JFK Act, all current, past, and former departments, agencies, offices, divisions, foreign offices, bureaus, and deliberative bodies of any Federal, state, or local government and includes all inter- or intra-agency working groups, committees, and meetings that possess or created records relating to the assassination of President John F. Kennedy.

(b) The inclusion of artifacts in the scope of the term assassination record is understood to apply solely to the JFK Assassination Records Collection and to implement fully the terms of the JFK Act and has no direct or indirect bearing on the interpretation or implementation of any other statute or regulation.

(c) Whenever artifacts are included in the JFK Assassination Records Collection, it shall be sufficient to comply with the JFK Act if the public is provided access to photographs, drawings, or similar materials depicting the artifacts. Additional display of or examination by the public of artifacts in the JFK Assassination Records Collection shall occur under the terms and conditions established by the National Archives and Records Administration to ensure their preservation and protection for posterity.

(d) The terms and, or, any, all, and the plural and singular forms of nouns shall be understood in their broadest and most inclusive sense and shall not be understood to be terms of limitation.

(e) Unless the Review Board in its sole discretion directs otherwise, records that are identified with respect to a particular person shall include all records relating to that person that

use or reflect the true name or any other name, pseudonym, codeword, symbol number, cryptonym, or alias used to identify that person.

(f) Unless the Review Board in its sole discretion directs otherwise, records that are identified by the Review Board with respect to a particular operation or program shall include all records, pertaining to that program by any other name, pseudonym, codeword, symbol, number, or cryptonym.

**§ 1400.8 Implementing the JFK Act—
Notice of Assassination Record Designation.**

(a) A Notice of Assassination Record Designation (NARD) shall be the mechanism for the Review Board to announce publicly its determination that a record or group of records meets the definition of assassination records.

(b) Notice of all NARDs will be published in the FEDERAL REGISTER within 30 days of the decision to designate such records as assassination records.

(c) In determining to designate such records as assassination records, the Review Board must determine that the record or group of record will more likely than not enhance, enrich, and broaden the historical record of the assassination.

**PART 1405—RULES IMPLEMENTING
THE GOVERNMENT IN THE SUN-
SHINE ACT**

Sec.

1405.1 Applicability.

1405.2 Definitions.

1405.3 Open meetings requirement.

1405.4 Grounds on which meetings may be closed or information may be withheld.

1405.5 Procedures for closing meetings, or withholding information, and requests by affected persons to close a meeting.

1405.6 Procedures for public announcements of meetings.

1405.7 Changes affecting a meeting following the public announcement of a meeting.

1405.8 Availability and retention of transcripts, recordings, and minutes, and applicable fees.

1405.9 Severability.

AUTHORITY: 5 U.S.C. 552b; 44 U.S.C. 2107.

SOURCE: 60 FR 45336, Aug. 31, 1995, unless otherwise noted.

§ 1405.1 Applicability.

(a) This part implements the provisions of the Government in the Sunshine Act (5 U.S.C. 552b). These procedures apply to meetings of the Review Board. The Review Board may waive the provisions set forth in this Part to the extent authorized by law.

(b) Requests for all documents other than the transcripts, recordings, and minutes described in 1405.8 shall be governed by Review Board regulations pursuant to the Freedom of Information Act (5 U.S.C. 552).

§ 1405.2 Definitions.

As used in this part:

Chairperson means the Member elected by the Board to serve in said position pursuant to 44 U.S.C. 2107.7(f).

General Counsel means the Review Board's principal legal officer, or an attorney serving as Acting General Counsel.

Government office means any office of the Federal Government that has possession or control of assassination records as set forth in 44 U.S.C. 2107.3(5).

Meeting means the deliberations of three or more Members where such deliberations determine or result in the joint conduct or disposition of official Review Board business. A meeting does not include:

(1) Notation voting or similar consideration of business, whether by circulation of material to the Members individually in writing or by a polling of the Members individually by telephone.

(2) Action by three or more Members to:

(i) Open or to close a meeting or to release or to withhold information pursuant to § 1405.5;

(ii) Set an agenda for a proposed meeting;

(iii) Call a meeting on less than seven days' notice as permitted by § 1405.6(b); or

(iv) Change the subject matter or the determinations to open or to close a publicly announced meeting under § 1405.7(b).

(3) A session attended by three or more Members for which the purpose is to receive briefings from the Review Board's staff or expert consultants,

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provided that members of the Review Board do not engage in deliberations at such sessions that determine or result in the joint conduct or disposition of official Review Board business on such matters. The General Counsel will inform the Review Board if developing discussions at a briefing or gathering should be deferred until a notice of an open meeting can be published in the FEDERAL REGISTER.

(4) A session attended by three or more Members for which the purpose is to receive informational briefings from representatives of government offices discussing classified or otherwise restricted information in accordance with the provisions of the JFK Act, provided that Members of the Review Board do not engage in deliberations at such sessions that determine or result in the joint conduct or disposition of official Review Board business on such matters.

(5) A gathering of three or more Members for the purpose of holding informal preliminary discussions or exchanges of views, but that does not effectively predetermine official Review Board action.

Member means a current member of the Review Board as provided by law.

Presiding Officer means the Chairperson or any other Member authorized by the Review Board to preside at a meeting.

Review Board means the Assassination Records Review Board created pursuant to 44 U.S.C. 2107.7.

§ 1405.3 Open meetings requirement.

Any meetings of the Review Board, as defined in § 1504.2, shall be conducted in accordance with this part. Except as provided in § 1405.4, the Review Board's meetings, or portions thereof, shall be open to public observation.

§ 1405.4 Grounds on which meetings may be closed or information may be withheld.

A meeting may be closed when the Review Board properly determines that an open meeting would disclose information that may be withheld under the criteria enumerated below. Similarly, information that otherwise would be required to be disclosed under §§ 1405.5, 1405.6, and 1405.7 may also be withheld

under these criteria. All records of closed meetings shall, however, be disclosed at a future date consistent with the terms and requirements of the JFK Act. Except in a case where the Review Board finds that the public interest requires otherwise, the criteria for closing meetings are whether information disclosed at such meetings is likely to:

(a) Disclose matters that are:

(1) Specifically authorized under criteria established by the Executive Order to be kept secret in the interests of national defense or foreign policy; and

(2) In fact properly classified pursuant to such Executive order;

(b) Relate solely to the internal personnel rules and practices of the Review Board;

(c) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552), provided that such statute:

(1) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(2) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(d) Discloses trade secrets and commercial or financial information obtained from a person and is privileged or confidential;

(e) Involves accusing any person of a crime, or formally censuring any person;

(f) Discloses information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(g) Discloses investigatory records compiled for law enforcement purposes, or information which, if written, would be contained in such records, but only to the extent that the production of such records or information would:

(1) Interfere with enforcement proceedings;

(2) Deprive a person of a right to a fair trial or an impartial adjudication;

(3) Constitute an unwarranted invasion to personal privacy;

(4) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency

conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(5) Disclose investigative techniques and procedures; or

(6) Endanger the life or physical safety of law enforcement personnel;

(h) Specifically concern the Review Board's issuance of a subpoena, or the Review Board's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Review Board of a particular case of formal agency adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing; or

(i) Disclose other information for which the Sunshine Act provides an exemption to the open meeting requirements of the Act.

§ 1405.5 Procedures for closing meetings, or withholding information, and requests by affected persons to close a meeting.

(a) A majority of all Members may vote to close a meeting or withhold information pertaining to that meeting. A separate vote shall be taken with respect to each action under § 1405.4. A majority of the Review Board may act by taking a single vote with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series. Each Member's vote under the paragraph shall be recorded and no proxies shall be permitted.

(b) Any person whose interests may be directly affected if a portion of a meeting is open may request the Review Board to close that portion of the meeting on the grounds referred to in § 1405.4 (e), (f), or (g). Requests, with reasons in support thereof, should be submitted to the Office of the General Counsel, Assassination Records Review Board, 600 E Street, NW., 2nd Floor,

Washington, DC 20530. On the motion of any Member, the Review Board shall determine by recorded vote whether to grant the request.

(c) Within one working day of any vote taken pursuant to this section, the Review Board shall make publicly available a written copy of such vote reflecting the vote of each Member on the question. If a portion of a meeting is to be closed to the public, the Review Board shall make available a full written explanation of its action closing the meeting (or portion thereof) and a list of all persons expected to attend the meeting and their affiliation.

(d) For each closed meeting, the General Counsel shall publicly certify that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemptive provision. A copy of such certification shall be available for public inspection.

(e) For each closed meeting, the Presiding Officer shall issue a statement setting forth the time, place, and persons present. A copy of such statement shall be available for public inspection.

(f) For each closed meeting, with the exception of a meeting closed pursuant to § 1405.4(h), the Review Board shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting. For meetings or portions thereof that are closed pursuant to § 1405.4(h), the Review Board may maintain a set of minutes in lieu of such transcript or recording. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote. The records of closed meetings, in addition to all other records of the Review Board, shall be included as permanent records in the JFK Collection at the National Archives as provided by the JFK Act.

§ 1405.6 Procedures for public announcements of meetings.

(a) For each meeting, the Review Board shall make public announcement, at least one week before the meeting, of the:

(1) Time of the meeting;

- (2) Place of the meeting;
- (3) Subject matter of the meeting;
- (4) Whether the meeting is to be open or closed; and
- (5) The name and business telephone number of the official designated by the Review Board to respond to requests for information about the meeting.
- (b) The one week advance notice required by paragraph (a) of this section may be reduced only if:
 - (1) A majority of all Members determines by recorded vote that Review Board business requires that such meeting be scheduled in less than seven days; and
 - (2) The public announcement required by paragraph (a) of this section is made at the earliest practicable time.

§ 1405.7 Changes affecting a meeting following the public announcement of a meeting.

(a) After there has been a public announcement of a meeting, the time or place of such meeting may be changed only if the Review Board publicly announces such change at the earliest practicable time. Members need not approve such change by recorded vote.

(b) After there has been a public announcement of a meeting, the subject matter of such meeting, or the determination of the Review Board to open or to close a meeting or a portion thereof to the public, may be changed only when:

- (1) A majority of all Members determines, by recorded vote, the Review Board business so requires and that no earlier announcement of the change was possible; and
- (2) The Review Board publicly announces such change and the vote of each Member thereof at the earliest practicable time.

§ 1405.8 Availability and retention of transcripts, recordings, and minutes, and applicable fees.

In accordance with the provisions of the JFK Act, the Review Board shall retain the transcript, electronic recording, or minutes of the discussion of any item on the agenda or of any testimony received at a closed meeting for inclusion as a permanent record in the JFK Collection at the National Ar-

chives once the work of the Review Board is completed. The public shall have access to such records consistent with the provisions of the JFK Act which, according to the understanding of the Review Board, supersedes the Sunshine Act and FOIA. Copies of any nonexempt transcript or minutes, or transaction of such recordings disclosing the identity of each speaker, shall be furnished to any person at the actual cost of transcript or duplication unless otherwise provided by the terms of the JFK Act. If at some later time the Review Board determines that there is no further justification for withholding a portion of a transcript, electronic recording, or minutes or other item of information for the public which had been previously withheld, such portion or information shall be made publicly available.

§ 1405.9 Severability.

If any provision of this part of the application of such provision to any person or circumstance, is held invalid, the remainder of this part of the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

PART 1410—RULES IMPLEMENTING THE FREEDOM OF INFORMATION ACT

Sec.

1410.5 Scope.

1410.10 Definitions.

1410.15 Requests for Review Board records available through the Public Reading Room.

1410.20 Review Board records exempt from public disclosure.

1410.25 Requests for Review Board records not available through the Public Reading Room (FOIA requests).

1410.30 Requests for waiver or reduction of fees.

1410.35 Fees for Review Board record requests.

1410.40 Processing of FOIA requests.

1410.45 Procedure for appeal of denial of requests for Review Board records and denial of requests for fee waiver or reduction.

1410.50 Requests for classified agency records.

AUTHORITY: 5 U.S.C. 552; 44 U.S.C. 2107.

§ 1410.5

SOURCE: 60 FR 45339, Aug. 31, 1995, unless otherwise noted.

§ 1410.5 Scope.

This part contains the Review Board's regulations implementing the Freedom of Information Act, 5 U.S.C. 552.

§ 1410.10 Definitions.

(a) *Review Board record* is a record in the possession and control of the Review Board that is associated with Review Board business. Review Board records do not include:

(1) Publicly available books, periodicals, films, sound or video recordings, photographs, or other publications that are owned or copyrighted by nonfederal sources that the Review Board acquires and uses for reference and research purposes;

(2) Records owned by another Federal agency that the Review Board temporarily holds for the purpose of conducting its review under the President John F. Kennedy Assassination Records Collection Act of 1992 (JFK Act) (FOIA requests for such documents should be directed to the originating agency);

(3) Records delivered to the Review Board for transfer to the JFK Collection at the National Archives and Records Administration (NARA).

(b) *Designated FOIA Officer* means the person designated by the Executive Director to administer the Review Board's activities pursuant to the regulations in this part. The Designated FOIA Officer shall also be the Review Board officer having custody of or responsibility for Review Board records and shall be the Review Board's officer responsible for authorizing or denying production of Review Board records upon request filed pursuant to § 1410.25.

(c) *Executive Director* means the principal staff official appointed by the Review Board pursuant to 44 U.S.C. 2107.8(a).

(d) *Review Board* means the Assassination Records Review Board created pursuant to 44 U.S.C. 2107.7.

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§ 1410.15 Requests for Review Board records available through the Public Reading Room.

(a) A Public Reading Room will be maintained at the Review Board headquarters and will be open between 10 a.m. and 4:30 p.m., Monday through Friday, except on Federal holidays. Documents may be obtained in person from the Public Reading Room.

(b) The Public Reading Room records will include the following (if and when such records are created):

(1) The Review Board's rules and regulations;

(2) Statements of policy adopted by the Review Board;

(3) Transcripts of public hearings;

(4) Review Board orders, decisions, notices, and other formal actions;

(5) Copies of all unclassified filings, certifications, pleadings, Review Board records, briefs, orders, judgments, decrees, and mandates in court proceedings to which the Review Board is a party and the correspondence with the courts or clerks of court;

(6) Unclassified reports to Congress in which the Review Board's operations during a past fiscal year are described;

(7) Administrative staff manuals and instructions to staff to the extent that such manuals or instructions affect a member of the public; and

(8) Indices of the documents identified in this section, but not including drafts thereof.

§ 1410.20 Review Board records exempt from public disclosure.

The Review Board will make all Review Board records available for inspection and copying, except that it may exempt from release those portions of:

(a) Review Board records specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy, and that are in fact properly classified pursuant to such Executive Order;

(b) Review Board records related solely to the internal personnel rules and practices of the Review Board;

(c) Review Board records specifically exempted from disclosure by statute

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(other than 5 U.S.C. 552), provided that such statute:

(1) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(2) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(d) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(e) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency;

(f) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(g) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(1) Could reasonably be expected to interfere with enforcement proceedings;

(2) Would deprive a person of a right to a fair trial or an impartial adjudication;

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(4) Could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record of information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(5) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(6) Could reasonably be expected to endanger the life or physical safety of any individual

(h) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(i) Geological and geophysical information and data, including maps, concerning wells.

§ 1410.25 Requests for Review Board records not available through the Public Reading Room (FOIA Requests).

(a) Upon the request of any person, the Review Board shall make available for public inspection and copying any reasonably described Review Board record in the possession and control of the Review Board, but not available through the Public Reading Room, subject to the provisions of this part.

(b) A person may request access to Review Board records that are not available through the Public Reading Room by using the following procedures:

(1) The request must be in writing and must reasonably describe the Review Board records requested to enable Review Board personnel to locate them with a reasonable amount of effort. A request for all Review Board records falling within a reasonably specific and well-defined category shall be regarded as conforming to the statutory requirement that Review Board records be reasonably described. Where possible, specific information such as dates or titles that may help identify the Review Board records should be supplied by the requester, including the names and titles of Review Board personnel who may have been contacted regarding the request prior to the submission of the written request.

(2) The request should be addressed to the Designated FOIA Officer, and clearly marked "Freedom of Information Act Request." The address for such requests is: Designated FOIA Officer, Assassination Records Review Board, 600 E Street, N.W., 2nd Floor, Washington, D.C. 20530. Requests must be either mailed or hand-delivered to the above address. Hand-delivered requests will be received between 8:30 a.m. and 5 p.m., Monday through Friday, except on Federal holidays. For

purposes of calculating the time for response to the request under § 1410.40, the request shall not be deemed to have been received until it is in the possession of the Designated FOIA Officer or such other person who may be responsible for receiving such requests.

(3) The request must include:

(i) A statement by the requester of a willingness to pay the fee applicable under § 1410.35(b), or to pay that fee not to exceed a specific amount, or

(ii) A request for waiver or reduction of fees.

No request shall be deemed to have been received until the Review Board has received a statement of willingness to pay, as indicated in paragraph (b)(3)(i), of this section or has received and approved a request for waiver or reduction of fees.

(c) Requests for Review Board records containing information received from another agency, or records prepared jointly by the Review Board and other agencies, and that do not fall under category § 1410.10(a)(2) above, shall be treated as requests for Review Board records. The Designated FOIA Officer shall, however, coordinate with the appropriate official of the other agency. The notice of determination to the requester, in the event part or all of the record is recommended for denial by the other agency, shall cite the other agency denying officials as well as the Designated FOIA Officer if a denial by the Review Board is also involved.

(d) If a request does not reasonably describe the Review Board records sought, as provided in paragraph (b) of this section, the Review Board response shall specify the reasons why the request failed to meet those requirements and shall offer the requester the opportunity to confer with knowledgeable Review Board personnel in an attempt to restate the request. If additional information is needed from the requester to render the agency records reasonably described, any restated request submitted by the requester shall be treated as an initial request for purpose of calculating the time for response under § 1410.40.

(e) The Review Board will not be required to create new agency records, compile lists of selected items from its

files, or create new statistical or other data.

(f) The Review Board staff may also respond to oral, unmarked, or generally stated requests for information and documents even though those requests do not comply with the provisions of this rule.

§ 1410.30 Request for waiver or reduction of fees.

(a) The Review Board shall collect fees for record requests made under § 1410.25 as provided in § 1410.35(b), unless the Review Board grants a written request for a waiver or reduction of fees. The Designated FOIA Officer shall make a determination on a fee waiver or reduction request within five working days of the request coming into his or her possession. If the determination is made that the written request for a waiver or reduction of fees does not meet the requirements of this section, the Designated FOIA Officer shall inform the requester that the request for waiver or reduction of fees is being denied and set forth the appeal rights under § 1410.45.

(b) A person requesting the Review Board to waive or reduce search, review, or duplication fees shall:

(1) Describe the purpose for which the requester intends to use the requested information;

(2) Explain the extent to which the requester will extract and analyze the substantive content of the Review Board record;

(3) Describe the nature of the specific activity or research in which the Review Board records will be used and the specific qualification the requester possesses to utilize information for the intended use in such a way that it will contribute to public understanding of the operations or activities of the Government;

(4) Describe the likely impact of disclosure of the requested records on the public's understanding of the subject as compared to the level of understanding of the subject existing prior to disclosure;

(5) Describe the size and nature public to whose understanding a contribution will be made;

(6) Describe the intended means of dissemination to the general public;

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(7) Indicate if public access to information will be provided free of charge or provided for an access or publication fee; and

(8) Describe any commercial or private interest the requester or any other party has in the Review Board records sought.

(c) The Review Board shall waive or reduce fees, without further specific information from the requester if, from information provided with the request for Review Board records made under § 1410.25, it can determine that it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester.

(d) In making a determination regarding a request for a waiver or reduction of fees, the Review Board shall consider the following factors:

(1) Whether disclosure is likely to contribute significantly to public understanding of Government operations or activities, and

(2) Whether the requester has a commercial interest and, if so, the extent of any interests and how they would be furthered by the disclosure of the requested Review Board records.

§ 1410.35 Fees for Review Board record requests.

(a) *Fees for Review Board records available through the Public Reading Room.* Duplication fees charged shall be limited to the costs of duplication of the requested Review Board records or the cost to have them duplicated. A schedule of fees for this duplication service is set forth at paragraph (b)(6) of this section. A person may also obtain a copy of the schedule of fees in person or by mail from the Public Reading Room.

(b) *Fees for Review Board records not available through the Public Reading Room (FOIA requests).*— (1) *Definitions.* For the purpose of paragraph (b) of this section:

Commercial use request means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a re-

quester properly belongs in this category, the Review Board must determine the use to which a requester will put the documents requested. Moreover, where the Review Board has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the Review Board will seek additional clarification from the Office of Management and Budget before assigning the request to a specific category.

Direct costs means those expenditures which the Review Board incurs in search, review, and duplication, to respond to requests under § 1410.25. Direct costs include, for example, the salary and benefits cost of Review Board employees applied to time spent in responding to the request and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as cost of space, and heating or lighting the facility in which the Review Board records are stored.

Educational institution refers to a pre-school, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

Noncommercial scientific institution refers to an institution that is not operated on a commercial basis and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

Representative of the news media refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public, and may include cable casting or computer on-line dissemination if offered as a service that is organized and operated to disseminate news to the public. The term “news” means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but

only in those instances when the periodicals can qualify as disseminations of “news”) who make their products available for free and or for purchase or subscription by the general public. These examples are not intended to be all-inclusive. A “freelance” journalist may be regarded as working for a news organization if the journalist can demonstrate a solid basis for expecting publication through that organization, even though the journalist is not actually employed by the news organization. A publication contract is the best proof, but the Review Board may also look to the past publication record of a requester in making this determination.

(2) *Fees.* (i) If the Review Board determines that the documents are requested for commercial use, it shall charge the average salary rate, including benefits, for Review Board employees, for document search time and for document review time, in addition to the costs of duplication as established in the schedule of fees in paragraph (b)(6) of this section.

(ii) If documents are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research, or a representative of the news media, the Review Board’s charges shall be limited to the direct costs of duplication as established in the schedule of fees in paragraph (b)(6) of this section. There shall be no charge for the first 100 pages of duplication.

(iii) For a request not described in paragraphs (b)(2)(i) or (b)(2)(ii) of this section the Review Board shall charge the average salary rate for Review Board employees (including benefits), for document search time, and the direct costs of duplication as established in the schedule of fees in paragraph (b)(6) of this section. There shall be no charge for document review time and the first 100 pages of reproduction and the first two hours of search time will be furnished without charge.

(iv) If the Review Board is asked by a requester to send Review Board records by special methods such as express mail, it may do so, provided that the requester pays for the express delivery service.

(v) The Review Board may assess charges for time spent searching, even if it fails to locate the records, or if Review Board records located are determined to be exempt from disclosure.

(vi) Whenever the Review Board estimates that fees are likely to exceed \$25, it shall notify the requester of the estimated costs, unless the requester has indicated in advance a willingness to pay fees as high as those anticipated. Such a notice shall offer the requester an opportunity to confer with the Review Board personnel to reformulate the request to meet the requester’s needs at a lower cost.

(3) *Limitations on Fees.* The Review Board, or its designate, may establish minimum fees below which no charges will be collected, if it determines that the costs of routine collection and processing of the fees are likely to equal or exceed the amount of the fees. If total fees determined by the Review Board for a FOIA request would be less than the appropriate threshold, the Review Board shall not charge the requesters.

(4) *Payment of fees.* (i) Payment of fees must be by check or money order made payable to the Assassination Records Review Board.

(ii) *Advance Payments.* (A) If the Review Board estimates or determines that allowable charges that a requester may be required to pay are likely to exceed \$250, the Review Board shall notify such requester of the estimated cost and either require satisfactory assurance of full payment where the requester has a history of prompt payment of fees, or require advance payment of the charges if a requester has no payment history.

(B) If a requester has previously failed to pay a fee in a timely fashion, the Review Board shall require the requester to pay the full amount owed plus any applicable interest, and to make an advance payment of the full amount of the estimated fee before the Review Board will begin to process a new request or pending request from that requester.

(C) When the Review Board requires advance payment under this paragraph, the administrative time limits prescribed in §1410.40(b) will begin only

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after the Review Board has received the fee payments.

(5) *Aggregation of Requests.* Requesters may not file multiple requests, each seeking portions of a document or documents, solely in order to avoid payment of fees. When the Review Board reasonably believes that a requester, or a group of requesters acting in concert, is attempting to divide a request into a series of requests for the purpose of evading assessment of fees, the Review Board may aggregate any such requests and charge the requester accordingly. The Review Board shall not, however, aggregate multiple requests on unrelated subjects from a requester.

(6) *Fee Schedule.* Fees will be charged as provided below:

(i) *Duplication of Review Board records.* Review Board records will be duplicated at a rate of \$.10 per page, provided the Review Board staff duplicates the records. If the Review Board determines that the duplication is so time-consuming that it must be sent to an outside duplication service, the requester will be charged the actual commercial rate.

(ii) *Duplication of large documents.* Large documents (e.g., maps, diagrams) will be duplicated at actual commercial rates.

(iii) *Review.* Review fees shall be assessed with respect to only those requesters who seek Review Board records for a commercial use, as defined in (b)(2)(i) of this section. For each hour spent by agency personnel in reviewing a requested Review Board record for possible disclosure, the fee shall be \$20.15 except that where the time of managerial personnel is required, the fee shall be \$47.40 for each hour of time spent by such managerial personnel.

(iv) *Search.* For each hour spent by administrative personnel in searching for and retrieving a requested Review Board record, the fee shall be \$14.75. Where a search and retrieval cannot be performed entirely by clerical personnel—for example, where the identification of Review Board records within the scope of a request requires the use of professional personnel—the fee shall be \$20.15 for each hour of search time spent by such professional personnel. Where the time of managerial

personnel is required, the fee shall be \$47.40 for each hour of time spent by such managerial personnel.

§ 1410.40 Processing of FOIA requests.

(a) Where a request complies with § 1410.25 as to specificity and statement of willingness to pay or request for fee waiver or reduction, the Designated FOIA Officer shall acknowledge receipt of the request and commence processing of the request. The Designated FOIA Officer shall prepare a written response:

- (1) Granting the request;
- (2) Denying the request;
- (3) Granting or denying it in part;
- (4) Stating that the request has been referred to another agency under § 1410.25; or

(5) Informing the requester that responsive Review Board records cannot be located or do not exist.

(b) Action pursuant to this section to provide access to requested Review Board records shall be taken within 10 working days of receipt of a request for Review Board records, as defined in § 1410.25, except that where unusual circumstances require an extension of time before a decision on a request can be reached and the person requesting Review Board records is promptly informed in writing by the Designated FOIA Officer of the reason for such extension and the date on which a determination is expected to be made, the Designated FOIA Officer may take an extension not to exceed 10 working days.

(c) For purposes of this section and § 1410.45, the term “unusual circumstances” may include but is not limited to the following:

- (1) The need to search, collect, and appropriately examine a voluminous amount of separate and distinct Review Board records that are demanded in a single request; or
- (2) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

§ 1410.45 Procedure for appeal of denial of requests for Review Board records and denial of requests for fee waiver or reduction.

(a)(1) A person whose request for access to Review Board records or request for fee waiver or reduction is denied in whole or in part may appeal that determination to the Executive Director within 30 days of the determination. Appeals filed pursuant to this section must be in writing, directed to the Executive Director at the address stated above, and clearly marked "Freedom of Information Act Appeal." Such an appeal received by the Review Board that is not properly addressed and marked will be so addressed and marked by Review Board personnel as soon as it is properly identified and then will be forwarded to the Executive Director. Appeals taken pursuant to this paragraph will be considered to be received upon actual receipt by the Executive Director.

(2) The Executive Director shall make a determination with respect to any appeal within 20 working days after the receipt of such appeal. If, on appeal, the denial of the request for Review Board records or fee reduction is in whole or in part upheld, the Executive Director shall notify the person making such request of the provisions for judicial review of that determination.

(b) In unusual circumstances, as defined in § 1410.40(c), the time limits prescribed for deciding an appeal pursuant to this section may be extended by up to 10 working days by the Executive Director, who will send written notice to the requester setting forth the reasons for such extension and the date on which a determination or appeal is expected to be dispatched.

§ 1410.50 Requests for classified agency records.

The Review Board may at any time be in possession of classified records received from other Federal agencies. Except with respect to those documents identified in § 1410.10(a)(2), the Review Board shall refer requests under § 1410.25 for such records or information to the other agency without making an independent determination as to the releasability of such documents. The

Review Board shall refer requests for classified records in a manner consistent with Executive Order 12958 of April 17, 1995, or other such law as may apply.

PART 1415—RULES IMPLEMENTING THE PRIVACY ACT

Sec.

- 1415.5 Scope.
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- 1415.45 Disclosure of records to third parties.
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- 1415.55 Exemptions.

AUTHORITY: 5 U.S.C. 552a; 44 U.S.C. 2107.

SOURCE: 60 FR 64123, Dec. 14, 1995, unless otherwise noted.

§ 1415.5 Scope.

This part contains the Review Board's regulations implementing the Privacy Act of 1974, 5 U.S.C. 552a.

§ 1415.10 Definitions.

In addition to the definitions provided in the Privacy Act, the following terms are defined as follows:

Assassination records, for the purpose of this regulation only, are records created by Government offices (other than the Review Board), entities, and individuals that relate to the assassination of President John F. Kennedy that may, from time to time, come into the temporary custody of the Review Board but that are not the legal property of the Review Board.

Executive Director means the principal staff official appointed by the Review Board pursuant to 44 U.S.C. 2107.8(a).

JFK Act means the President John F. Kennedy Records Collection Act of 1992.

Privacy Act Officer means the person designated by the Executive Director to administer the Review Board's activities pursuant to the regulations in this part.

Review Board means the Assassination Records Review Board created pursuant to 44 U.S.C. 2107.7.

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System of records means a group of records that is within the possession and control of the Review Board and from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. Assassination records, as defined above, are not included in the Review Board's systems of records.

§ 1415.15 Systems of records notification.

Any individual who wishes to know whether a system of records contains a record pertaining to him or her may file a request in person or in writing. Written requests should be directed to the Privacy Act Officer, Assassination Records Review Board, 600 E Street, NW, Washington, DC 20530, and should be clearly marked "Privacy Act Request."

§ 1415.20 Requests by an individual for access to their own records.

(a) *Requests in writing.* An individual may request access to his or her own records in writing by addressing a letter to the Privacy Act Officer, Assassination Records Review Board, 600 E Street, NW, 2nd Floor, Washington, DC 20530. The request should contain the following information:

(1) Full name, address, and telephone number of requester;

(2) Proof of identification, which should be a copy of one of the following: Valid driver's license, valid passport, or other current identification which contains both an address and picture of the requester;

(3) The system of records in which the desired information is contained; and

(4) At the requester's option, authorization for expenses (see § 1415.50 below).

(b) *Requests in person.* Any individual may examine his or her own record on the Review Board's premises. To do so, the individual should call the Review Board's offices at (202) 724-0088 and ask to speak to the Privacy Act Officer. This call should be made at least two weeks prior to the time the requester would like to see the records. During this call, the requester should be prepared to provide the same information

as that listed in paragraph (a) of this section except for proof of identification.

§ 1415.25 Processing of requests.

(a) The Privacy Act Officer will process all requests under both the Freedom of Information Act and the Privacy Act.

(b) The Privacy Act Officer will respond to the request within ten working days of its receipt by the Privacy Act Officer. If the Review Board needs additional time to respond, the Privacy Act Officer will provide the requester an explanation as to why the Review Board requires an extension.

(c) Following the initial call from the requester, the Privacy Act Officer will determine: whether the records identified by the requester exist, and whether they are subject to any exemption under § 1415.55 below. If the records exist and are not subject to exemption, the Privacy Act Officer will call the requester and arrange an appointment at a mutually agreeable time when the records can be examined. At the appointment, the requester will be asked to present identification as stated in § 1415.20(a)(2). The requester may be accompanied by one individual of his or her own choosing, and should state during this call whether or not a second individual will be present at the appointment. In the event that a second individual accompanies the requester, the requester will be asked to provide the Review Board with written consent to disclose his or her records to the second individual.

(d) If a request is received for information compiled in reasonable anticipation of a civil action or proceeding, the Privacy Act Officer will determine whether to disclose the information and will inform the requester whether this information is subject to release under the Privacy Act (see 5 U.S.C. 552a(d)(5)).

§ 1415.30 Appeals from access denials.

When access to records has been denied in whole or in part by the Privacy Act Officer, the requester may file an appeal in writing. This appeal should be directed to the Executive Director, Assassination Records Review Board,

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600 E Street, NW., 2nd Floor, Washington, DC 20530. The appeal letter must specify those denied records that are still sought and state why the denial by the Privacy Act Officer is erroneous. The Executive Director or his representative will respond to such appeals within thirty working days after the appeal letter is received in the Review Board's offices, unless, for good cause shown, the Executive Director extends such thirty day period. The appeal determination will explain the basis for continuing to deny access to any requested records and will notify the requester of his or her right to judicial review of the Executive Director's determination.

§ 1415.35 Requests for amendment of records.

(a) *Amendment requests.* Any person is entitled to request amendment of a record pertaining to him or her. This request must be made in writing and should be addressed to the Privacy Act Officer, Assassination Records Review Board, 600 E Street, NW., 2nd Floor, Washington, DC 20530. The letter should clearly identify the amendments desired. An edited copy will usually be acceptable for this purpose.

(b) *Initial response.* The Privacy Act Officer will acknowledge the request for amendment within ten working days of receipt of the request. The Privacy Act Officer will provide a letter to the requester within thirty working days stating whether or not the request for amendment has been granted or denied. The Privacy Act Officer will amend information that is not accurate, relevant, timely, or complete, unless the record is excluded or exempt. If the Privacy Act Officer decides to deny any portion of the amendment request, the reasons for the denial will be provided to the requester. In addition, the Privacy Act Officer will inform the requester of his or her right to appeal the Privacy Act Officer's determination to the Executive Director.

§ 1415.40 Appeals from amendment of denials.

(a) When amendment of records has been denied by the Privacy Act Officer, the requester may file an appeal in writing. This appeal should be directed

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to the Executive Director, Assassination Records Review Board, 600 E Street, NW., 2nd Floor, Washington, DC 20530. The appeal letter must specify the record subject to the appeal, and state why the denial of amendment by the Privacy Act Officer is erroneous. The Executive Director or his representative will respond to such appeals within thirty working days (subject to extension by the Executive Director for good cause) after the appeal letter has been received in the Review Board's offices.

(b) The appeal determination, if adverse to the requester in any respect, will:

(1) Explain the basis for denying amendment of the specified records;

(2) Inform the requester that he or she may file a concise statement setting forth reasons for disagreeing with the Executive Director's determination; and

(3) Inform the requester of his or her right to pursue a judicial remedy under 5 U.S.C. 552a(g)(1)(A).

§ 1415.45 Disclosure of records to third parties.

Records subject to the Privacy Act that are requested by a person other than the individual to whom they pertain will not be made available except in the following circumstances:

(a) Release is required under the Freedom of Information Act in accordance with the Review Board's FOIA regulations, 36 CFR part 1410;

(b) Pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains; or

(c) Release is authorized by 5 U.S.C. 552a(b)(1) or (3) through (11).

§ 1415.50 Fees.

A fee will not be charged for search or review of requested records, or for amendment of records. When a request is made for copies of records, a copying fee will be charged at the same rate established for FOIA requests. See 36 CFR 1410.35. However, the first 100 pages will be free of charge.

§ 1415.55 Exemptions.

(a) The systems of records entitled "Personal Security Files" and "Subject File" contain some information specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and which is properly classified pursuant to such Executive Order. Therefore, to the extent that information in these systems falls within the coverage of exemption (k)(1) of the Privacy Act, 5 U.S.C. 552a(k)(1), these systems of records are eligible for exemption from the requirements of the following subsections of the Privacy Act: subsections (c)(3), (d), (e)(1), (e)(4)(G), (H) and (I) and (f). Disclosure of information properly classified pursuant to an Executive Order would jeopardize the national defense or foreign policy of the United States.

(b) The systems of records entitled "Agency Contacts," "Investigations," "Public Contacts," and "Subject File" consist, in part, of investigatory material compiled by the Review Board for law enforcement purposes other than material within the scope of subsection (j)(2) of 5 U.S.C. 552a. Provided however, that if any individual is denied any right, privilege or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to January 1, 1975, under an implied promise that the identity of the source would be held in confidence. Therefore, to the extent that information in these systems falls within the coverage of exemption (k)(2) of the Privacy Act, 5 U.S.C. 552a(k)(2), these systems of records are eligible for exemption from the requirements of the following subsections of the Privacy Act, for the reasons stated below.

(1) From subsection (c)(3) because release of the agency's accounting of certain disclosures to an individual who is the subject of an investigation could

reveal the nature and scope of the investigation and could result in the altering or destruction of evidence, improper influencing of witnesses, and other evasive actions that could impede or compromise the investigation.

(2) From subsection (d) because release of investigative records to an individual who is the subject of an investigation could interfere with pending or prospective law enforcement proceedings, constitute an unwarranted invasion of the personal privacy of third parties, reveal the identity of confidential sources, or reveal sensitive investigative techniques and procedures.

(3) From subsections (d)(2), (3), and (4) because amendment or correction of investigative records could interfere with pending or prospective law enforcement proceedings, or could impose an impossible administrative and investigative burden by requiring the Review Board continuously to retrograde its investigations attempting to resolve questions of accuracy, relevance, timeliness, and completeness.

(4) From subsection (e)(1), because it is often impossible to determine relevance or necessity of information in the early stages of an investigation. The value of such information is a question of judgment and timing; what appears relevant and necessary when collected may ultimately be evaluated and viewed as irrelevant and unnecessary to an investigation.

(5) From subsection (e)(4)(G) and (H), because the Review Board is claiming an exemption for subsections (d) (Access to Records) and (f) (Agency Rules) of the Act, these subsections are inapplicable to the extent that these systems of records are exempted from subsections (d) and (f).

(6) From subsection (f) because procedures for notice to an individual pursuant to subsection (f)(1) as to the existence of records pertaining to the person dealing with an actual or potential investigation must be exempted because such notice to an individual would be detrimental to the successful conduct of a pending or future investigation. In addition, mere notice of an investigation could inform the subject or others that their activities either are, or may become, the subject of an

investigation and might enable the subjects to avoid detection or to destroy assassination records. Since the Review Board is claiming an exemption for subsection (d) of the Act (Access to Records) the rules require pursuant to subsection (f)(2) through (5) are inapplicable to these systems of records to the extent that these systems of records are exempted from subsection (d).

(c) The systems of records entitled "Employment Applications" and "Personal Security Files" consist in part of investigatory material compiled by the Review Board for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or Federal contracts, the release of which would reveal the identity of a

source who furnished information to the Government under an express promise that the identity of the source would be held in confidence. Therefore, to the extent that information in these systems falls within the coverage of Exemption (k)(5) of the Privacy Act, 5 U.S.C. 552a(k)(5), these systems of records are eligible for exemption from the requirements of subsection (d)(1), because release would reveal the identity of a source who furnished information to the Government under an express promise of confidentiality. Revealing the identity of a confidential source could impede future cooperation by sources, and could result in harassment or harm to such sources.

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